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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL BAIL APPLICATION NO.902 OF 2017

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|----|--------------------------|---------------|
| 1. | Nikhil Rohidas Tavare | |
| 2. | Mayur Kashinath Tavare | ...Applicants |
| | Versus | |
| | The State of Maharashtra | ...Respondent |

Mr.M.S.Mohite i/b Mr.P.M.Patil, for the Applicants.

Mr.Prashant Jadhav, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 24th JULY, 2017

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicants seek their enlargement on bail in connection with C.R.No.171 of 2016 registered with the Rajgad Police Station, Pune (Rural), for the alleged offences punishable under Sections 302, 323, 504, 506 r/w 34 of the Indian Penal Code.

3. Learned Counsel for the applicants submitted that the applicants have been falsely implicated in the said case. He submitted that although Sagar Sonawane is an eye-witness to the incident of assault, the certificate issued by the Department of Surgery, Bharati Vidyapeeth University Medical College Hospital and Research Centre, Pune, shows, that Sagar had given history of 'assault by unknown person with bamboo sticks on 22nd October, 2016 at around 21:30 hrs'. He submitted that the said certificate issued by the Department of Surgery also shows, that the deceased-Laxman went into sudden cardiac arrest at 3.15 hrs, on 23rd October, 2016 and that, as the cause of death was not known, the body was sent for postmortem. Learned Counsel further relied on the postmortem report, which shows that Laxman (deceased) had sustained injuries essentially on his fingers and hands and that there was no head injury or any fractures. He further submitted that the possibility of subdural hemorrhage at the base of the brain, could occur due to sudden fight. According to the learned counsel, the cause of death given in the postmortem report i.e. 'death due to blunt trauma to head' is contrary to the certificate issued by the Department of Surgery, Bharati Vidyapeeth University Medical College Hospital and Research Centre, Pune. He further

submitted that the applicants had no motive to assault the deceased and that the applicants have no antecedents.

4. Learned APP does not dispute the fact that there is contradiction in the certificate issued by the Department of Surgery, Bharati Vidyapeeth University Medical College Hospital and Research Centre, Pune, and the cause of death mentioned in the postmortem. He also does not dispute the fact, that the applicants have no antecedents.

5. Perused the papers. The incident took place on 22nd October, 2016 at about 9.30 p.m. It is alleged by the complainant – Nitin Jadhav, that his brother Laxaman (deceased), was a friend of Sagar Sonawane. He has stated that Sagar was running a saloon and that his business was expanding. It is alleged that the applicants were also running a barber's shop and due to the business competition between Sagar and the present applicants, the applicants had some grievance against Sagar. According to the complainant, on 22nd October, 2016 his brother – Laxman (Deceased) and Sagar met at about 9.30 p.m, near Umesh's house, when the applicants came to the spot on a motorcycle armed with sticks. It is alleged that the

applicants abused Sagar. It is further alleged that the applicants started assaulting Sagar with sticks, when Laxman (Deceased) intervened in the said assault. It is alleged that the applicant no.1 – Nikhil assaulted Laxman (Deceased) with a stick on his head and the applicant no.2-Mayur gave kick blows on Laxman's stomach. Thereafter, Sagar is alleged to have escaped from the spot. The eye-witnesses to the said incident, informed the complainant, who thereafter, took his brother – Laxman (Deceased) initially to 'Shriyas Hospital and thereafter to the Bharati Vidyapeeth Hospital. Laxman (Deceased) succumbed to the injuries at about 3.00 a.m, pursuant to which, the aforesaid FIR was lodged. Although, the postmortem report shows the cause of death as 'death due to blunt trauma to head', column no.19 of the postmortem report shows that there was no injury on the head nor any fracture of the skull or on any other part. Column No.17 shows that Laxman (Deceased) had received injuries on his fingers and hands. Infact, the certificate issued by the Department of Surgery, Bharati Vidyapeeth University Medical College Hospital and Research Centre, Pune, shows that Laxman (Deceased) was brought by Sagar Sonawane with alleged history of 'assault by unknown person with bamboo sticks at around 21:30 hrs on 22nd October, 2016'. It appears that the patient was kept in the

ICU and was on ventilator support, when he went into sudden cardiac arrest on 23rd October, 2015 at around 3.15 a.m. The patient's body was thereafter, sent for postmortem examination, as the cause of death was not known. It is not in dispute, that the applicants were known to Sagar and hence there was no reason to give history by unknown persons. *Prima facie*, there is some discrepancy with regard to the cause of death, due to which Laxman (Deceased) expired. Admittedly, there was no motive for the applicants to assault Laxman (Deceased). The injury certificate of Sagar has not been placed on record. Investigation is complete and charge-sheet is filed. The applicants have no antecedents.

6. Considering the aforesaid, the application is allowed and the applicants are enlarged on bail on the following terms and conditions:-

ORDER

- i) The Applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount;
- ii) The Applicants shall attend the concerned Police Station, on the first Monday of every month, between 10:00 a.m. to 11:00 a.m., till the

conclusion of the trial;

iii) The Applicants shall inform their latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;

iv) The Applicants shall not the complainant, witnesses or any person concerned with the case;

v) The Applicants shall co-operate in the conduct of the trial;

vi) An undertaking to the aforesaid clauses (ii) to (v), shall be filed by the Applicant, in the Registry of the trial Court, within two week's after their release;

vii) It is made clear, that if there is breach of any of the conditions as stated above, the prosecution shall be at liberty to seek cancellation of Applicants' bail.

7. The Application is allowed and disposed of in above terms.
8. It is made clear that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.
9. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)